

ST 00-0042-GIL 03/08/2000 HOTEL OPERATORS' TAX

Organizations that enjoy exemption from Illinois sales tax are not similarly exempt from Hotel Operators' Occupation Tax when renting a hotel or motel room. This includes rentals to churches, charities, schools, and units of government, including the U.S. Government. The only exemptions available are for rentals to permanent residents and to certain diplomatic personnel. See 86 Ill. Adm. Code 480.101. (This is a GIL).

March 8, 2000

Dear Xxxxx:

This letter is in response to your letter dated February 8, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

The attached exempt letter was sent to us by a customer who is coming to our hotel in April.

Also attached is a copy of the hotel tax law that was sent to us from your office in 1991.

We are confused about honoring their tax exempt letter since it says the opposite of the Illinois State Law regarding hotel tax.

We would appreciate any information or advice you can give us regarding this matter.

The area of Illinois tax law governing the Hotel Operators' Occupation Tax is somewhat confusing, but the short answer is that organizations that enjoy exemption from Illinois sales tax are not similarly exempt from Hotel Operators' Occupation Tax when renting a hotel or motel room. This includes rentals to churches, charities, schools, and units of government, including the U.S. Government. See the enclosed copy of 86 Ill. Adm. Code 480.101. The only exemptions available to an operator are for rentals to permanent residents and to certain diplomatic personnel. Section 480.101 specifically states that rentals to government agencies are not exempt from tax. See Section 480.101(b)(3).

The Hotel Operators' Occupation Tax is only imposed upon the hotel operator. No "use tax" is imposed upon the person renting the room. However, the hotel operator is authorized to collect a "reimbursement" from the person renting the room. The Hotel Operators' Occupation Tax Act authorizes hotel operators to charge this reimbursement, it does not require them to do so. Since there is no "use tax" that a person or organization may be exempt from, the hotel operator always incurs Hotel Operators' Occupation Tax liability when a room is rented.

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The legal incidence of the Hotel Operators' Occupation Tax is on the hotel operator, not on the renter of the room. The U.S. Constitution does not prohibit the imposition of a tax on persons who do business with a government agency. Although the reimbursement charge made to a renter may be stated by the hotel operator as "tax", it is not a tax. It is a reimbursement--a "pass on" charge. It is entirely proper for the hotel operator to collect this reimbursement charge when the renter is a governmental agency. Whether a renter refuses to pay this reimbursement is a matter between the renter and the hotel operator; however, the hotel operator remains liable for the tax even if the renter refuses to pay the reimbursement.

With regard to the Letter of Exemption attached to your letter, federal credit unions are exempt from hotel taxes when the legal incidence of the tax falls on such federal credit unions. In Illinois, the legal incidence of the Hotel Operators' Occupation Tax is on the hotel operator and not federal credit unions.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Gina Roccaforte
Associate Counsel

GR:msk
Enc.